

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-44445
Issue No.: 5009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: October 28, 2010
DHS County: Wayne (15)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claimant's request for a hearing. After due notice, a telephone hearing was held on October 28, 2010. Claimant did not appear. [REDACTED] ssoc., Claimant's Authorized Representative, appeared and testified for Claimant. [REDACTED] [REDACTED], appeared and testified for the Department of Human Services (DHS).

ISSUE

Whether DHS properly denied Claimant's application for Medical Assistance (MA or Medicaid) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence in the record and on the entire record as a whole, finds as fact:

1. On July 17, 2009, Claimant applied for retroactive MA benefits.
2. On September 28, 2009, DHS received authority to telephone the Authorized Representative (AR) to verify Claimant's hospital charges, and verified the information.
3. Also on September 28, 2009, DHS faxed two Verification Checklists, DHS Forms 3503 and 3503C, to the AR.
4. The AR never received the Checklists, or misplaced or lost them.

5. On March 15, 2010, DHS denied Claimant's application for the stated reason, "You failed to verify or allow the department to verify information necessary to determine eligibility for this program."
6. On April 27, 2010, Claimant filed a Hearing Request Form with DHS.
7. Claimant's Hearing Request Form states twice that the Authorized Representative was unaware that DHS had requested verification.

CONCLUSIONS OF LAW

MA was established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations. DHS administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

I find and determine that the applicable manual item in this matter is BAM 105, "Rights and Responsibilities." Within BAM 105, I find there are two portions that are relevant to this case, and they are on pages 1 and 5.

BAM 105 starts with the following statement of DHS policy:

RIGHTS AND RESPONSIBILITIES

DEPARTMENT POLICIES

All Programs

Clients have rights and responsibilities as specified in this item.

The local office must do **all** of the following:

- Determine eligibility.
- Calculate the level of benefits.
- Protect client rights.

BAM 105, p. 1 (bold print in original).

Applying this policy to the case before me, I find and determine that DHS failed to protect the client's rights in this case when it failed to resubmit the Verification Checklists to Claimant's AR on or after April 27, 2010. It is clear to me from the detailed information presented in the Hearing Request Form that Claimant did not receive the Verification Checklists in September 2009, and the Checklists needed to be re-sent. DHS failed to do this.

I find and determine that DHS' error also falls afoul of a second manual Item, BAM 600, "Hearings," which sets forth DHS policy:

HEARINGS

DEPARTMENT POLICY

All Programs

Clients have the right to contest a department decision affecting eligibility or benefits levels whenever they believe a decision is incorrect. The department provides an administrative hearing to review the decision and determine its appropriateness. This item includes procedures to meet the minimum requirements for a fair hearing.

Efforts to clarify and resolve the client's concerns must start when the hearing request is received and continue through the day of the hearing. BAM 600, p. 1 of 34 (bold print in original).

I find that DHS' failure to answer Claimant's request, stated twice in the Hearing Request Form, constitutes a failure to clarify and resolve the issues in this case. Indeed, it appears from the record that DHS merely filed the Hearing Request in the file and made no response to Claimant's request for clarification.

Third and last, I return to BAM 105, this time to a second portion which I feel DHS failed to regard, and that is the client's responsibility to cooperate. On page 5 of BAM 105, it states that the client's duty to cooperate is as follows:

**CLIENT OR AUTHORIZED REPRESENTATIVE
RESPONSIBILITIES**

Responsibility to Cooperate

All Programs

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of necessary forms. See Refusal to Cooperate Penalties in this section. BAM 105, p. 5.

I read this policy to mean that unless a client in fact refuses to cooperate, DHS must recognize and process the application. Based on all of the evidence and testimony in this case, I find and conclude that Claimant's AR fully cooperated with DHS in every respect in this case. I find that the failure to receive, misplace or lose faxes does not constitute a refusal to cooperate. The manual states that unless there is a refusal to cooperate, cooperation has occurred. I find that this is a DHS failure to protect client rights in that Claimant was not given a reasonable opportunity to provide verification.

Moreover, I observe that Claimant's initial application packet includes a detailed list of enclosures and four paragraphs of text indicating the fullest cooperation with the DHS system. I find that the cover letter specifically requests a Verification Checklist and emphasizes that the AR wishes to be as helpful as possible in the application process. I find that Claimant's initial packet provided DHS not only with the Application, but also the Retroactive Application Form, the Authorization to Represent, the Authorization for Release of Information, and the Appearance of Authorized Representative, all properly signed and executed. All of this persuades me that Claimant fully cooperated with DHS in this case.

I note also that, but for the coincidence of a DHS telephone call to Claimant's AR on September 28, 2009, Claimant might never have received a Checklist. The Checklists are dated September 28, 2009, indicating to me that no Checklists were sent to Claimant before that date. DHS failed to issue a Checklist in response to Claimant's July 1, 2009, request for it, and DHS did nothing before September 28, 2009, over two months, by way of sending Checklists.

In conclusion, I determine there was DHS error in this case and DHS is REVERSED. DHS is hereby ORDERED to reopen and process Claimant's application for retroactive Medicaid benefits in accordance with all DHS policies and procedures.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides and concludes that DHS is REVERSED. DHS is ORDERED to reopen and process Claimant's application in accordance with all DHS policies and procedures.



Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 3, 2010

Date Mailed: November 3, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JL/pf

cc:

